

March 22, 2017

**VIA CERTIFIED MAIL**

Current President or CEO  
Otis McAllister, Inc.  
300 FRANK H OGAWA PLZ  
OAKLAND, CA 94612-2037

**VIA PRIORITY MAIL**

District Attorneys of All California  
Counties and Select City Attorneys  
(See Attached – Certificate of Service)

**VIA ELECTRONIC FILING**

State of California Department of Justice  
Office of the Attorney General  
Proposition 65 Enforcement Reporting  
Filing link: [oag.ca.gov/prop65](http://oag.ca.gov/prop65)

**RE: 60-DAY NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE  
SECTION 25249.5 *ET. SEQ.***

Dear Alleged Violator(s) and the Appropriate Public Enforcement Agencies:

We represent Chemical Toxin Working Group, Inc. ("CTWG") acting in the interest of the public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability.

CTWG has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products.

This letter constitutes notification of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, CTWG intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information About Proposition 65.**

A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator

identified below.

**Alleged Violator.**

The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violator" or "OTIS") is:

Otis McAllister Inc.

**Consumer Products and Listed Chemicals.**

The products that are the subject of this Notice are:

La Sirena Sardines in Oil- Lead & Arsenic

La Sirena Sardines in Olive Oil- Lead & Arsenic

OTIS has owned, manufactured, marketed, distributed and/or sold the listed products which have exposed and continues to expose numerous individuals within California to lead and arsenic. Lead was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Arsenic was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and/or developmental and reproductive toxicity.

**Route of Exposure.**

The primary route of exposure to these chemicals has been and continues to be through ingestion but may also occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.**

Ongoing violations have occurred every day since at least December 28, 2016, as well as every day since the products were introduced into the California marketplace, and will continue to occur every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. OTIS is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to lead and/or arsenic. While in the course of doing business, OTIS is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code § 25249.6.) The method of warning should be a warning that appears on the product's label. (Cal. Code Regs, tit.27, §25603.1, subd. (a).) OTIS has not provided any Proposition 65 warnings on the company's label or

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LAWYERS

any other appropriate warnings that persons handling, ingesting and/or otherwise using these products are being exposed to lead and/or arsenic.

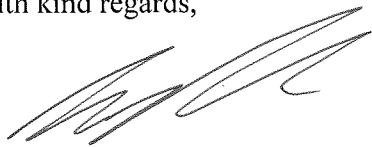
Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CTWG gives notice of the alleged violation to the noticed party and the appropriate governmental authorities.

CTWG intends to file a private enforcement action, as provided for in the Act, for the alleged violations by OTIS, unless OTIS agrees in an enforceable written instrument to: (1) recall the listed products so as to eliminate further exposure to the identified chemicals; or (2) affix clear and reasonable Proposition 65 warning labels for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty.

Consistent with the public interest goals of Proposition 65, CTWG is interested in seeking a constructive resolution to this matter, and invites OTIS, should they seek early resolution of this matter, to communicate directly with CTWG's attorneys. Such resolution with avoid further unwarned consumer exposures, as well as resource intensive litigation.

Please direct all questions concerning this notice to Howard Miller (213-977-0211 ext. 319; [hmiller@girardikeese.com](mailto:hmillar@girardikeese.com)) and/or Avery Behrle (213-977-0211 ext. 107; [abehrle@girardikeese.com](mailto:abehrle@girardikeese.com)).

With kind regards,



HOWARD MILLER  
AVERY A. BEHRLE  
GIRARDI | KEESE  
Attorney for Chemical Toxin Working Group, Inc.

**Attachments:**

Certificate of Merit

Additional Supporting information for Certificate of Merit (*for Attorney General only*)

Certificate of Service

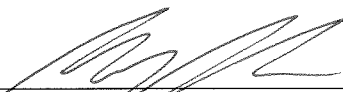
The Safe Drinking and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*for Violator only*)

**CERTIFICATE OF MERIT**  
**Notice of Proposition 65 Violations**

I, Avery A. Behrle, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice of Violation in which it is alleged the parties identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to the listed chemicals that are the subject of this Notice. Please refer to the Notice of Violation for additional details regarding the product name(s) and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action. I have reviewed the laboratory testing results for the chemicals subject to this Notice and relied on these results. The testing was conducted by a reputable testing laboratory by experienced scientists. The facts, studies, or other data derived in the Notice of Violation exposes persons to the listed chemicals that is the subject of this Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 22, 2017

By:   
Avery A. Behrle, Esq.

**CERTIFICATE OF SERVICE**

I, Avery A. Behrle, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct;

I am over the age of 18 years, and not a party to the within action; my business address is 1126 Wilshire Boulevard, Los Angeles, CA 90017.

On March 22, 2017, I served the following documents:

**60-DAY NOTICE OF INTENT TO SUE UNDER CALIFORNIA HEALTH  
& SAFETY CODE §25249.5 ET. SEQ.,**

**CERTIFICATE OF MERIT: HEALTH AND SAFETY CODE SECTION  
25249.7(d),**

**"THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT  
OF 1986 (PROPOSITION 65): A SUMMARY"**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party below, and depositing it at a United States Postal Service Office in Los Angeles, California for delivery by Certified Mail:

Current President or CEO  
Otis McAllister, Inc.  
300 FRANK H OGAWA PLZ  
OAKLAND, CA 94612-2037

On March 22, 2017, I served the following documents:

**60-DAY NOTICE OF INTENT TO SUE UNDER CALIFORNIA HEALTH  
& SAFETY CODE §25249.5 ET. SEQ.,**

**CERTIFICATE OF MERIT: HEALTH AND SAFETY CODE SECTION 25249.7(d),**

**CERTIFICATE OF MERIT ATTORNEY GENERAL COPY: FACTUAL  
INFORMATION SUFFICIENT TO ESTABLISH THE BASIS OF THE  
CERTIFICATE OF MERIT (Served to the Attorney General only)**

on the following parties by uploading the foregoing documents at the webpage listed below and by placing a true and correct copy thereof in a sealed envelope, addressed to the address listed below, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>


On March 22, 2017 I served the following documents:

**60-DAY NOTICE OF INTENT TO SUE UNDER CALIFORNIA HEALTH  
& SAFETY CODE §25249.5 ET. SEQ.,**

**CERTIFICATE OF MERIT: HEALTH AND SAFETY CODE SECTION  
25249.7(d)**

on each of the parties on the service list attached hereto (see attached "**Service List**") by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed on the attached service list, and depositing it at a United States Postal Service mail box for delivery by First Class Mail, except for the Contra Costa County District Attorney, Lassen County District Attorney, Riverside County District Attorney, Sacramento County District Attorney, San Francisco County District Attorney, Napa County District Attorney, San Joaquin County District Attorney, San Luis Obispo County District Attorney, Santa Clara County District Attorney, Sonoma County District Attorney, Tulare County District Attorney, Ventura County District Attorney, Monterey County District Attorney, and Yolo County District Attorney, which have requested electronic service only via the following email addresses, respectively (as listed on the Service List): SGrassini@contracostada.org; mlatimer@co.lassen.ca.us; prop65@rivcoda.org; prop65@sacda.org; Gregorv.alker@sfgov.org; cepd@countvofnapa.org; daconsumer.environmental@sicda.org; edobroth@co.slo.ca.us; epu@da.sccgov.org; ibames@sonoma-county.org; prop65@co.tulare.ca.us; daspecialops@ventura.org; Prop65DA@co.monterey.ca.us; and cfeprd@volocounty.org.

Executed on March 22, 2017, at Los Angeles, California.

  
Avery A. Behrle

## SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, P.O. Box 248  
Markleeville, CA 96120

The Honorable Todd Riebs  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95842

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Thomas Yack  
Calaveras County District Attorney  
851 Mountain Ranch Road  
San Andreas, CA 95248

The Honorable John Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable Dale Trigg  
Del Norte County District Attorney  
460 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vern Plerson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Lisa Smiltcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 6th Street, Fourth Floor  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93528

The Honorable Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Keith Fagundas  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Donald Anderson  
Lake County District Attorney  
265 North Forbes Street  
Lakeport, CA 96453

The Honorable Stacey Montgomery  
Lassen County District Attorney  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

The Honorable Jackie Lacey  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

The Honorable David Linn  
Madera County District Attorney  
208 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Thomas Cooke  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482

The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340

The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93702

The Honorable Gary Lieberstein  
Napa County District Attorney  
Carlthurs Building  
931 Parkway Mall  
P.O. Box 720  
Napa, CA 94558

The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

The Honorable Tony Rackauskas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Michael Hestrin  
Riverside County District Attorney  
3980 Orange Street  
Riverside, CA 92501

The Honorable Anne Marie Schubert  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95033

The Honorable Michael Ramos  
San Bernardino County District Attorney  
303 West 3rd Street, 8th Floor  
San Bernardino, CA 92415-0502

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101

The Honorable George Gascon  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103

The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201

The Honorable Dan Dow  
San Luis Obispo County District Attorney  
1035 Palm Street, 4th Floor  
San Luis Obispo, CA 93408

The Honorable Stephen Wagsstaffe  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Joyce Dudley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Jeff Rosell  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Stephen Carlton  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square  
Downsville, CA 95936

The Honorable James Kirk Andrus  
Slack County District Attorney  
P.O. Box 886  
Yreka, CA 96097

The Honorable Krishna Abrams  
Solano County District Attorney  
875 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Jill Ravitch  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

The Honorable Brigit Fladager  
Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354

The Honorable Amanda Lopper  
Sutter County District Attorney  
483 Second Street, Suite 102  
Yuba City, CA 95991

The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

The Honorable Eric Heryford  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Tim Ward  
Tulare County District Attorney  
221 South Mooney Boulevard,  
Rm 224  
Visalia, CA 93291-4593

The Honorable Laura Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93008

The Honorable Jeff Reisig  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95696

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

The Honorable James Sanchez  
Office of the City Attorney, Sacramento  
815 I Street, 4th Floor  
Sacramento, CA 95814

The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Dennis Herrera  
Office of the City Attorney, San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550